

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

1621 COIT ROAD REALTY LLC et al.	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 3:16-cv-3337-D
	§	
MIDWEST TX REALTY LLC et al.,	§	
	§	
Defendants.	§	

JOINT MOTION TO DISMISS AND DISCHARGE MANAGER

TO THE HONORABLE COURT:

Plaintiffs 1621 Coit Road Realty, LLC, 5601 Plum Creek Drive Realty, LLC, 2301 North Oregon Street Realty, LLC, and 8200 National Avenue Realty, LLC (collectively, “Plaintiffs”) and Defendants Midwest TX Realty LLC, Josef Neuman, and Oscar Rosenberg (collectively, “Defendants”), (collectively, the “Principal Parties”)¹ file this Joint Motion to Dismiss and Discharge Manager (the “Motion”).

1. This lawsuit arose out of the Principal Parties’ dispute related to a master lease of several skilled nursing facilities and long-term acute care hospitals in Texas and Oklahoma (the “Facilities”).

2. On December 12, 2016, the Court appointed Benchmark Healthcare Consultants, LLC as a manager/consultant of the Facilities “in order to (i) assist Midwest in curing any breaches under the Master Lease, (ii) assist Midwest in maintaining and preserving the operation of the businesses and value of the assets located at the Property (as defined in the Master Lease),

¹ Banco Popular North America and Capital Finance, LLC (collectively, the “Intervenors”) intervened in this action for the limited purpose of protecting their security interests in certain collateral which, they claimed, was the subject of relief requested of the Court by one or more of the Principal Parties. (*See* Docs. 15 (Capital Finance, LLC), 48 (Banco Popular North America)). As this Motion asks the Court to dispose of the claims about which the Intervenors complained, the Intervenors no longer have a cognizable interest in the case.

and (iii) carry out all functions as a manager of the Property, including, but not limited to, the authority to access the books and records related to the Property (including all billing, payroll, vendor, resident, and other information related to the operation of the businesses on the Property) as well as the right to control the finances, bank accounts, and other assets related to the Property, to obtain full cooperation from Midwest related to operation of the Property, to enter into, terminate, and amend contracts for services rendered to the facilities and residents, and to manage and receive all revenues, earnings, income, products, and profits from the operation of the Property.” (Doc. No. 34).

3. The Principal Parties have resolved the disputes between them with regard to the Facilities and now jointly move the Court to dismiss the claims which were or could have been asserted between Plaintiffs and Defendants in this lawsuit, and the lawsuit itself, with prejudice to the refiling of same.

4. Moreover, the Principal Parties further move the Court to enter an order discharging and releasing Benchmark from any further responsibility, liability, or obligation as manager/consultant of the Facilities.

WHEREFORE, PREMISES CONSIDERED, the Principal Parties respectfully request that the Court grant this Motion and enter the Order Dismissing With Prejudice and Discharging Manager filed herewith.

Respectfully submitted,

By: /s/ Brad Nitschke

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CERTIFICATE OF SERVICE

I certify that on May 1, 2018, I filed a copy of the foregoing document with the Clerk of the Court via the CM/ECF system which gave notice to all counsel of record.

/s/ Brad Nitschke

Brad Nitschke